SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1944.

Nos. 24 and 25 (Consolidated).

VICTOR J. HERB,
Petitioner,
vs.
NORMAN B. PITCAIRN and FRANK C. NICODEMUS, JR., Receivers for Wabash Railway Co.,
Respondents.
No. 24.

BENJAMIN F. BELCHER,
Petitioner,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Respondent.
No. 25.

BRIEF FOR RESPONDENTS.

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BRIEF FOR RESPONDENTS.

MAY IT PLEASE THE COURT:

INTRODUCTION.

By order of this Court, the above cases have been consolidated. The respondents in each case filed briefs in opposition to the respective petitions for certiorari. Respondents desire such briefs to be considered in the deter-

mination of these causes. However, petitioners have filed in this Court a brief which is substantially a repetition of what was said in their petitions. Respondents, although their answers to the petitions fully answer all that is said in the new brief, have deemed it advisable to file this brief in order, fully, in more detail and in one connected brief, to present their position in this Court. In the course of the argument we shall set forth petitioners' contentions and shall answer each and all of them.

THE DECISIONS IN THE COURT BELOW.

The decision of the Supreme Court of Illinois in No. 24, Herb v. Pitcairn et al., is reported in 384 Ill. 237, and appears in the printed record in that case (H. R. 25 et seq.).*

The decision of the Supreme Court of Illinois in No. 25, Belcher v. L. & N. R. R. Co., is reported in 384 Ill. 281, and appears in the printed record in that case (B. R. 25 et seq.).

STATEMENT OF THE CASES.

Petitioners' statement of the cases is so incomplete that we deem it better, in order that this Court may have before it the pertinent and material facts in a full and connected manner, briefly to restate the facts in each case.

In No. 24, the Herb case, petitioner, as plaintiff, on December 22, 1937, filed in the City Court of Granite City, Illinois, his complaint against respondents in that case, as defendants (H. R. 5), under the Federal Employers' Liability Act (U. S. C. A., Title 45, Secs. 51-59), for personal injuries sustained by petitioner on November 23, 1936, at or near the city of Decatur, Illinois (outside the city limits of the city of Granite City), alleging in said com-

*For convenience, the printed record in No. 24, the Herb case, will hereafter be referred to as H. R. and the printed record in No. 25, the Belcher case, will hereafter be referred to as B. R.

plaint a violation by respondents of the Federal Safety Appliance Act (U. S. C. A., Title 45, Secs. 1-16) relating to handbrakes. A summons was issued by said City Court and served upon respondents and answer filed by them. The cause was tried in the City Court, and judgment rendered in favor of respondents which was reversed by the Supreme Court of Illinois and the cause remanded to the City Court for a new trial.

Thereafter, on March 16, 1942, the Supreme Court of Illinois filed opinions in two cases then pending in said Court, namely, Werner v. Illinois Central R. R. Co., 379 Ill. 559, 42 N. E. (2d) 82, and Mitchell v. Louisville & Nashville R. Co., 379 Ill. 522, 42 N. E. (2d) 86, in each of which cases said Supreme Court of Illinois held that the various city courts in Illinois were without jurisdiction to hear and determine the subject matter of any action the cause of which arose outside of and beyond the territorial limits of the city in whose city court such action was attempted to be commenced. After learning of these decisions, petitioner, on June 17, 1942, about four and one-half years after his alleged cause of action accrued, filed a motion in the City Court of Granite City for a change of venue to the Circuit Court of Madison County, Illinois, under the provisions of an Illinois Statute known as the Venue Act (Ill. Rev. Stat., Chap. 146, par. 36, p. 3226),* purporting to authorize a change of venue of a suit attempted to be commenced in the wrong court or county to a proper court or county. In this motion (R. 18) petitioner stated: "This suit or action has been commenced, and is pending in the wrong court, and the venue thereof should be changed to a proper court pursuant to the terms and provisions of Chap. 146, Par. 36, Illinois Revised Statutes 1941." No other relief was prayed for in said motion and the asserted authority to change the

*Ill. Rev. Stat., where cited herein, at all times refers to "Illinois Revised Statutes, State Bar Association Edition 1943."

venue of this case from said City Court to said Circuit Court was based solely upon said last mentioned statute, which will be hereafter quoted and commented on in our argument.

On July 17, 1942, petitioner's motion for change of venue was allowed by said City Court and the venue ordered changed to the Circuit Court of Madison County, Illinois (H. R. 5), and on July 31, 1942, more than five years after petitioner was injured, and more than four years after filing his complaint in said City Court, all of the pleadings and papers and a certified transcript of all orders in said cause, in the City Court of Granite City, were filed in the Circuit Court of Madison County as on change of venue (H. R. 5).

On August 21, 1942, respondents filed in said Circuit Court their motion to dismiss petitioner's alleged cause of action (H. R. 18). This motion was based principally upon two grounds, namely: (1) That all orders entered, and all pleadings had, in the City Court of Granite City, including the order changing the venue thereof, were void and of no effect; and that the statute (Ill. Rev. Stat., Chap. 146, par. 36), which it is claimed authorizes a city court to change the venue of an action of which it has no jurisdiction to a court having jurisdiction (if it so purports or is construed to permit such change of venue), is contrary to Sec. 1 of Article VI of the Illinois Constitution and is therefore void; and (2) that plaintiff did not "commence" his suit in a court having jurisdiction of the subject matter or in any court of competent jurisdiction within two years from the date he sustained his injuries, as required by Sec. 6 of the Federal Employers' Liability Act (Sec. 56, Title 45, U. S. C. A.).

On November 27, 1942, the Circuit Court of Madison County sustained respondents' motion to dismiss and dismissed said suit, and entered judgment against petitioner

in bar of the action and for costs (H. R. 22). From that order and judgment petitioner (plaintiff) duly appealed to the Supreme Court of the State of Illinois (H. R. 23), where the judgment of the Circuit Court of Madison County, Illinois, was affirmed on September 24, 1943 (H. R. 25-33).

The opinion and decision of the Supreme Court of Illinois was based largely upon petitioner's (plaintiff's) failure to "commence" his suit in a court of competent jurisdiction within two years after sustaining his injuries, as required by Sec. 6 of the Federal Employers' Liability Act, which at the time of petitioner's injury required an action under it to be brought within two years. The Illinois Supreme Court, however, with equal emphasis, held that it was clear that no suit was commenced by the filing of the complaint in, or the issuance and service of summons by, the City Court, which had no jurisdiction of the action, that petitioner could have disregarded the alleged summons, that any judgment in such suit would be void and no execution could be issued by virtue of it. Sec. 6 of the Act was later amended so as to permit the action to be brought within three years after the injuries were sustained. It is not material here whether or not the amendment was retroactive because the motion for change of venue was filed July 17, 1942, and the record filed in the Circuit Court of Madison County on July 31, 1942, or about four and one-half years after the injuries were sustained. This is apparent from the following statement of the Court in its opinion (H. R. 27), namely:

> "The material point for consideration is whether the plaintiff has commenced an action within two years of the date of his injury in a court having jurisdiction to hear and determine the same, as required by Section 6 of the Federal Employers' Liability Act, by transferring the cause from a court having no jurisdiction over it at a date which, if then

originally filed in the latter court, could not be maintained because not filed within the statutory time." (H. R. 32) * * *

And again (H. R. 32):

"It is clear a suit was not commenced by filing the present suit in the City Court of Granite City, or by issuing summons or filing a complaint. **Lacking requisite jurisdiction because of the provisions of the Constitution limiting it to cases arising within the limits of the city, such Court was wholly incompetent to render any judgment or to authorize any proceedings which would result in a judgment.** When the case was transferred to the Circuit Court of Madison County, some five years after the date of the accident, by the filing of the transcript of orders entered in the City Court, and the pleadings and other documents, there was no commencement of a suit, but only the receipt of papers from a court in which it was impossible to commence one because of its lack of jurisdiction." (Emphasis supplied.)

In No. 25, the **Belcher case**, the material facts are very similar to those in the Herb case. In this case the accident on account of which the action was brought occurred February 15, 1939 (B. R. 2), in the switch yards in the City of Nashville, Tennessee. This suit was instituted in the City Court of East St. Louis, Illinois, on June 22, 1940 (B. R. 1), under the Federal Employers' Liability Act. Complaint was filed and summons was served on respondent in this case. On January 19, 1942 (B. R. 16), respondent filed a motion in the City Court to dismiss the cause for lack of jurisdiction of the subject matter, alleging, among other reasons, that Sec. 1 of Article VI of the Constitution of Illinois limits the jurisdiction of that court to suits arising within the city limits of East St. Louis, and setting forth that petitioner's suit did not arise within the limits of the City of East St. Louis but arose in the

City of Nashville, Tennessee. This motion was overruled by the City Court.

Afterwards respondent answered the complaint, the cause was tried in the City Court and a verdict in the case in favor of petitioner was set aside by the Court and a new trial granted.

On June 16, 1942, petitioner filed a motion in the City Court for a change of venue to the Circuit Court of St. Clair County, Illinois (B. R. 17), which motion was allowed by the City Court. The grounds of the petition for change of venue are substantially the same as those filed in the City Court of Granite City in the Herb case by the same counsel who represented petitioner in both cases. On July 17, 1942 (B. R. 20-21), the City Court of East St. Louis granted petitioner's motion for a change of venue to the Circuit Court of St. Clair County, and on August 10, 1942, the papers, proceedings and the transcript of the record in the City Court were filed in the Circuit Court of St. Clair County. Both the motion for change of venue and the allowance thereof and the filing of transcript in the Circuit Court were more than three years after the injuries were sustained; in fact, nearly three and one-half years thereafter. On August 15, 1942 (B. R. 21), respondent filed in the Circuit Court a motion to quash the summons issued by the City Court of East St. Louis and to dismiss the cause. The reasons assigned are the same as those assigned in the similar motion in the Herb case. On November 27, 1942 (B. R. 23), the Court sustained respondent's motion to dismiss and entered judgment in bar of petitioner's cause of action. Petitioner perfected an appeal from this order to the Supreme Court of Illinois, and that Court, on September 24, 1943, filed an opinion affirming the judgment of the Circuit Court. The opinion in this case is reported in 384 Ill. 281, and also appears in full in the record (B. R. 36-38), the Supreme Court of Illinois holding that the facts were parallel to those in

the Herb case and affirmed the judgment of the Circuit Court by virtue of the authority of the Herb case, decided on the same day, 384 Ill. 237. The two cases, therefore, present the same questions for consideration and decision by this Court. Petitioner in each of these cases filed his petition for certiorari on February 9, 1944, and the petitions were granted on March 27, 1944 (H. R. 45 and B. R. 42).

The Supreme Court of Illinois denied a rehearing in the Herb case on November 12, 1943 (H. R. 42), and in the Belcher case on the same day (B. R. 39). The petitions for rehearing are set forth in full in the two Transcripts of Record (H. R. 35 et seq. and B. R. 31 et seq.).

BASIS FOR THE DECISIONS BELOW.

Petitioners have devoted nearly four pages of their brief (pp. 9-12) to a statement of their conception of the basis for the decisions below, and state that there is some doubt as to the basis thereof. We submit that there is no doubt at all on this question. The decisions of the Supreme Court are clear in every respect and clearly hold that:

(1) Reaffirming its previous decisions the City Courts had no jurisdiction of the subject matter of these suits and could not constitutionally be given jurisdiction thereof.

(2) Inasmuch as the City Courts had no jurisdiction of the subject matter, no complaint was, in fact, ever legally filed; the summonses issued and services thereof were void and of no effect; all proceedings, whether preliminary or final, in the City Court were absolutely void; respondents could have disregarded the summonses served on them and let default be taken against them; any judgment rendered in such Court would be void, and no execution could be legally issued upon any such judgments and respondents' property could not be taken on any such execution.

(3) In view of the foregoing no suits were ever commenced in the City Courts nor could they be commenced therein, and consequently these suits were not commenced within two years after the injuries were received, as required by the Act.

(4) While, in substance, holding that Section 36 of the Venue Act did not apply, yet in the final analysis refused to pass directly upon the question of the validity, application or constitutionality of that section.

(5) It was unnecessary to pass upon the question of whether suits were commenced when the transcripts were filed in the Circuit Courts, because even if that constituted the "commencement" of suits, such fact was immaterial for the reasons that such filings were made more than two years after the injuries complained of were received. Yet the Court did pass upon this question and held that when the papers were filed in the Circuit Courts there was no commencement of suits there, but only receipt of papers from Courts in which it was impossible to commence them because of lack of jurisdiction.

Respondents contend, for the reasons hereinafter set forth in the argument, that:

(1) The Illinois Supreme Court was right in its conclusions as to Nos. 1, 2 and 3 above stated; that the decisions upon these points rest upon non-federal grounds which independently and adequately support the judgments; that the question of whether or when a suit is commenced in a State Court is a matter wholly within the jurisdiction of the State Court, its decision thereon in the absence of any federal constitutional question is final, and, therefore presents no federal question for review here, and consequently this Court has no jurisdiction of these cases.

(2) On No. 4, above stated, the Illinois Supreme Court did in the instant case and in other cases in fact decide

that Section 6 of the Venue Act did not apply to cases of this character brought in a City Court and would be unconstitutional if so applied. Yet for the purposes of these cases it declined directly to pass upon this question; furthermore, a decision on that question would be a non-federal question upon which the decision of the State Court would be final, would present no federal question and could not be decided here, but would be exclusively within the jurisdiction of the State Court to decide and determine.

(3) On No. 5, above stated, a decision upon that question is wholly immaterial, would not present a federal question and would not be reviewable by this Court. In fact, as stated in No. 5 above, the Illinois Supreme Court did directly pass on said point contrary to petitioners' contentions.

SUMMARY OF ARGUMENT.

I.

Jurisdiction of the various Illinois courts.

II.

City Courts under Sec. 2 of Article VI of the Illinois Constitution have no jurisdiction of any kind except in causes arising in the City where the Court is held.

III.

To give this Court jurisdiction in these cases, it must appear that there is a federal question involved which is decisive of the case. If the decision of the State court rests upon a non-federal ground, which independently and adequately supports the State court's judgment, this Court will not exercise jurisdiction.

IV.

No federal question is presented here. The decisions of the Supreme Court of Illinois rest upon non-federal grounds which independently and adequately support the judgments of the State court. The questions whether a suit has been commenced and whether brought in a State court, are obviously procedural questions, the decision of which by the State Supreme Court is final. Consequently, this Court has no jurisdiction of these cases.

V.

Even if the decision of the Supreme Court of Illinois on the question of whether or not a suit was commenced so as to toll the statute was not final, as we strenuously contend it was, yet that decision was right and is sustained by applicable and pertinent decisions and rules of law.

VI.

The City Courts did not have any jurisdiction, limited or otherwise, of these suits, did not have even a limited jurisdiction to change the venue to the Circuit Courts, and no such jurisdiction could constitutionally be conferred upon City Courts. Even if this question was debatable, the sole jurisdiction to decide it would rest in the Supreme Court of Illinois, and its decision would not present a federal question for review in this Court.

ARGUMENT.

I.

Jurisdiction of the Various Illinois Courts.

With the view that it might aid this Court in an understanding of the judicial structure in Illinois, we briefly refer to the Constitution, statutes and decisions relative thereto.

Sec. 1 of Article VI of the Illinois Constitution provides as follows:

> "The judicial powers, except as in this article is otherwise provided, shall be vested in one supreme court, **circuit courts**, county courts, justices of the peace, police magistrates, **and such courts as may be created by law in and for cities and incorporated towns**" (Ill. Rev. Stat., p. 25). (Emphasis supplied.)

The Supreme Court is the highest court of the State, and Sec. 2 of Article VI of the Constitution (Ill. Rev. Stat., p. 25) provides that it "shall have original jurisdiction in cases relating to the revenue, in mandamus and habeas corpus, and appellate jurisdiction in all other cases."

By statute, under constitutional authorization, an intermediate appellate court is provided for, having appellate jurisdiction only in certain cases. Likewise, county courts, probate courts, police magistrate and justice of the peace courts are provided for by the Constitution. Concededly, none of these courts has any jurisdiction whatever of tort actions. The only courts in Illinois having original jurisdiction of tort actions are the circuit courts, the Superior Court of Cook County (which is in fact an additional circuit court), and city courts **in tort actions arising within the limits of the city in which such city court is held.**

The only courts of general original jurisdiction in all cases at law and in equity and in statutory proceedings where such jurisdiction is conferred by the General Assembly are the circuit courts in the various counties. In fact, in the early cases of Beaubien v. Brinkerhoff, 3 Ill. 270, 2 Scam. 270; Hamilton v. Blair, 3 Ill. 276, 2 Scam. 276, and Beaubien v. Holmes, 3 Ill. 276, 2 Scam. 276, the Supreme Court of Illinois held that circuit courts are superior courts rather than inferior courts, possess original and unlimited jurisdiction at law and in equity, and exercise within their respective counties all of the powers and jurisdiction of the courts of King's Bench and common pleas in England.

In People v. Preston, 345 Ill. 11, 177 N. E. 761, the Supreme Court of Illinois held that circuit courts, having original jurisdiction of all causes in law and equity, are courts of general common law jurisdiction.

In People v. Graw, 363 Ill. 205, the Supreme Court of Illinois held that the provisions of Sec. 12 of Article VI of the Illinois Constitution that "circuit courts shall have original jurisdiction of all causes in law and equity" gives to the circuit court jurisdiction of all such causes, including every claim or demand known at the adoption of the Constitution, such as an action at law or a suit in chancery, and all actions since provided for involving personal or property rights of the same nature as those previously enforced by such actions or suits.

Therefore circuit courts, being courts of general jurisdiction, were open to both petitioners to bring their suits, provided, of course, that service upon defendants could be obtained.

On the other hand, city courts are courts of inferior jurisdiction. (The People v. Municipal Court, 359 Ill. 102, l. c. 107, 108, 109, and cases cited therein.) This case holds that the circuit court has the power to issue a writ

of prohibition directed to a city court and is the only court in the State possessing such power, and that that power does not exist even in the Supreme Court and the appellate courts.

City courts are established for the convenience of the people of the cities, and must be established by a vote of the people of the city in which they exist. Usually they exist in cities of considerable size which are not county seats, such as East St. Louis, Granite City, Chicago Heights, Calumet City, Aurora, Elgin, Moline, Canton and some twenty or thirty other cities in the State. By the decision in the Herb case (384 Ill. 237, l. c. 247) (H. R. 32), and other cases cited in division II of this argument, under the provisions of the Constitution above quoted, city courts cannot constitutionally be given jurisdiction of any case arising beyond the limits of the city in which they exist. The Illinois Supreme Court held that it is the Illinois Constitution itself which limits the jurisdiction of a city court to cases arising within the limits of the city.

Petitioners in their brief treat these decisions as merely holding that there is no venue in a City Court in a case arising outside the limits of the city. This is not true. The Court held that there was absolutely no jurisdiction in a City Court, and none could be constitutionally granted, of the subject matter of a suit arising outside the limits of the city in which such Court was held. The holdings were based solely on lack of jurisdiction of the subject matter of such a suit. However, in the "Conclusion" of their brief (p. 34) petitioners apparently abandon this contention and concede our contention in the following language:

> "Petitioners here recognize the invalidity of the trials had in their cases in the City Courts, in the light of the decisions in Werner v. Illinois Central R. Co., supra, and Mitchell v. Louisville & Nashville R. Co., supra, and recognize that all proceedings in the

said City Courts between the commencement of their suits and the changes of venue to the Circuit Courts, were void."

Petitioners then contend, in spite of such concessions, that the suits were legally commenced in the City Courts, even though those courts had no jurisdiction of the subject matter thereof, within the meaning of Sec. 6 of the Employers' Liability Act; further contend that even if this was not so the City Courts had a right to change the venue to the Circuit Courts, a question not directly passed upon by the Supreme Court of Illinois, and which, if material here, would be determined solely by the Illinois Court whose decision thereon would not present a federal question and would not be subject to review here; and that by reason thereof when the papers were filed in the Circuit Courts the date of commencement of the suits dated back to the attempted filing in the City Courts.

Under a subsequent heading in this argument we shall fully answer these contentions.

The Supreme Court of Illinois had never held, as contended in petitioners' brief (pp. 19-20) that City Courts possessed general jurisdiction of the subject matter of suits arising outside the limits of the city where located. An examination of the opinion in the Werner case, supra, clearly shows that the Illinois Supreme Court based its decision of lack of jurisdiction upon a long line of its former decisions, beginning with some of the earliest cases decided by that Court.

II.

City Courts Under Sec. 2 of Article VI of the Illinois Constitution Have No Jurisdiction of Any Kind Except in Causes Arising in the City Where the Court Is Held.

This proposition of law is no longer subject to dispute in Illinois. In Werner v. Illinois Central R. R. Co., 379 Ill. 559, the question of jurisdiction of the City Court in

a Federal Employers' Liability Act case was raised after the case reached the Supreme Court on leave to appeal. The Supreme Court of Illinois held that the vesting of judicial powers as provided by Sec. 1 of Article VI of the Illinois Constitution in "such courts as may be created by law in and for cities and incorporated towns" limited the jurisdiction of such City Courts to causes of action arising within the city in which such court was held, and that such City Courts had no jurisdiction, and in fact none could be granted to them under the Constitution, to try cases of any kind arising outside the corporate limits of such city. The Court said, l. c. 566:

> "As pointed out, the power of the Court to hear such a case is limited as to the place where the cause of action arose. If it arose without the city where the court is located, whether in the same county or another county or State, the city court is without jurisdiction to hear the case."

On the same day, on the authority of the Werner case, the Supreme Court of Illinois, in Mitchell v. L. & N. R. R. Co., 379 Ill. 522, upon a parallel factual situation, handed down an opinion to the same effect.

In Smith v. L. & N. R. R. Co., 381 Ill. 55, McGlynn & McGlynn, attorneys, sought to enforce an attorney's lien under the Illinois statute in the City Court of East St. Louis in a case that had been brought in that court though the cause of action arose outside the city. In the attorney's lien statute there is ample provision for enforcing the attorney's lien rights by petition in the client's cause. The Supreme Court held, however, under the authority of the Werner and Mitchell cases, that even the attorneys could not maintain their attorneys' lien in a case pending in a City Court which had no jurisdiction because the cause of action arose outside the city.

In the instant case of Herb v. Pitcairn, 384 Ill. 237 (H. R. 27), the Supreme Court of Illinois again followed the Werner, Mitchell and Smith cases, and held, l. c. 247 (H. R. 32), that lacking the requisite jurisdiction because of the provisions of the Constitution limiting it to causes arising within the limits of the city, the City Court was wholly incompetent to render any judgment or to authorize any proceedings that would result in a judgment.

In the Herb case, l. c. 244 (H. R. 30), the Supreme Court of Illinois said:

> "When the present suit was filed in the city court of Granite City the defendants could have disregarded the summons, and judgment rendered in such court would have been without effect and no justification for seizing defendants' property on execution."

No clearer statement could be made that the City Courts in each of these cases were wholly without jurisdiction to try these cases, and in fact had no jurisdiction whatever of the subject matter. If the defendants could have disregarded the summons and any judgment rendered in such courts would have been null and void and without effect, and would have been no justification for seizing defendants' property on execution, then it is idle to say that such a court has any jurisdiction whatever over the subject matter. To the same effect is the decision in the Belcher case, supra.

In fact, in the Werner, Mitchell and Smith cases, supra, the question of jurisdiction was raised for the first time in the Supreme Court, and after answer, trial and judgment, and that Court held that because jurisdiction was wholly lacking the question could be properly raised at that time.

In the Werner case, supra, 379 Ill., l. c. 566, the Supreme Court of Illinois, in passing upon this question and holding that, unlike venue, a question of jurisdiction was

involved which could not even be waived by appearance and participation in the trial and could be raised at any time, even on appeal, said:

> "The city court of East St. Louis being without jurisdiction of the subject matter, the judgment is void and of no effect. Jurisdiction could not be conferred by the consent of the parties and was not waived by defendant's appearance and participation in the trial. It is a question that may be raised at any time, even on appeal. Town of Audubon v. Hand, 223 Ill. 367; Town of Kingston v. Anderson, 300 id. 577."

Under well recognized and established principles of law these very facts conclusively demonstrate the total lack of jurisdiction of the City Court, and definitely and finally dispose of petitioners' points II, sub-pars. B, C and D of their Summary of Argument (pp. 16-17), and completely destroy the applicability of the arguments made and decisions cited in support thereof, as set forth on pages 28 to 31 of their brief. Furthermore, the decisions of the Illinois Court in the instant cases fully and completely refute this argument. Again this disposes of petitioners' argument in their brief (p. 28) to the effect that service of summons, filing of answer and entry of general appearance by respondents' recognized jurisdiction. The Illinois Supreme Court has held otherwise and its decision as we shall hereafter show is final upon that question and cannot be reviewed here.

It is not a question of limited jurisdiction, as intimated by petitioners' counsel in their petitions and brief. **It is a case of no jurisdiction at all of the subject matter.** Petitioners in their petitions have sought to imply that the City Court had a limited jurisdiction over the subject matter of these suits. That statement is made on page 7 of the petition in the Herb case, it is repeated on page 8 and at various other places in the argument and repeated

in their present brief, but is completely at variance with the cited decisions of the Illinois Supreme Court.

Again, on page 13 of the petition in the Herb case, and repeated and adopted in the Belcher petition (p. 11), and again reiterated under point IV on page 34 of their brief, it is implied that by these decisions the Supreme Court of Illinois has discriminated between rights arising under the Federal Employers' Liability Act and rights arising under State laws. This statement is not true. A reading of these decisions of the Supreme Court of Illinois will clearly show that its holdings as to want of jurisdiction apply to all kinds of cases—tort, contract, equity, divorce and every other kind of a proceeding known to law or equity. In fact, in the Werner case, 379 Ill. 559, l. c. 565, the Supreme Court of Illinois decided against petitioner's position when it said:

> "The question is not as to whether a city court has jurisdiction to try a personal injury case brought under the Federal Employers' Liability Act, but whether such a court has jurisdiction to try a case where the acts from which the cause of action arises occurred outside the territorial limits of the city."

Furthermore, the decision in Smith v. L. & N. R. R. Co., 381 Ill. 55, involved a suit to enforce an attorney's lien.

It seems unnecessary to argue this question further, not only on account of the authorities cited, but also on account of the fact that in the petitions for certiorari in these cases and in the motions for change of venue from the City Courts to the Circuit Courts and in their brief here petitioner in each case has admitted that the City Court did not have jurisdiction of the cases, except that it was, and is, claimed that the City Courts had a limited jurisdiction to change the venue, a question which we will hereafter discuss.

We therefore approach the real argument in this case with the clearly shown, and in fact conceded, principle

of law that the respective City Courts were wholly without jurisdiction to try these cases, limited or unlimited; and in fact had no jurisdiction whatever over the subject matter of these two cases.

III.

To Give This Court Jurisdiction in These Cases, It Must Appear That There Is a Federal Question Involved Which Is Decisive of the Case. If the Decision of the State Court Rests Upon a Non-federal Ground, Which Independently and Adequately Supports the State Court's Judgment, This Court Will Not Exercise Jurisdiction.

It seems scarcely necessary to cite authorities in support of the rule above laid down. On pages 3 and 13 of the brief in opposition to the petition in the Belcher case, and on pages 8 and 13 of the answer to the Herb petition, we have cited many authorities in support of this rule of law. We ask that they be considered in connection with this point. Here we cite but two late cases, namely, Honeyman v. Hanan, Executor, 300 U. S. 14, and Kalb v. Feuerstein, 308 U. S. 433.

In the Honeyman case, l. c. 18, this Court held that before it may undertake to review a decision of the court of a State, it must appear affirmatively from the record not only that the federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause. Again, on page 21 of the opinion this Court quoted approvingly from its previous decision in Brown v. Atwell, 92 U. S. 327, as follows:

> "We have often decided that it is not enough to give us jurisdiction over the judgments of the State courts for the record to show that a Federal question was argued or presented to that court for decision. It

> must appear that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it. Commercial National Bank of Cincinnati v. Buckingham's Executors, 5 How. 341; Lawler et al. v. Walker et al., 14 id. 154; R. R. Co. v. Rock, 4 Wall. 180; Parmelee v. Lawrence, 11 id. 38."

In the Kalb case, supra, l. c. 437, the Court said:

> "Appellees insist, however, that the Wisconsin court on rehearing rested its judgment on an adequate non-Federal ground. If that were the fact, we would not, under accepted practice, reach the State court's construction of the Federal statute."

It is our position, as we shall demonstrate under a subsequent heading, that there was not only no federal question presented for decision to or decided by the Supreme Court of Illinois, but also that the decision of the State court on which is claimed to be a federal question was not necessary to the determination of the cause, and that said decision was rendered without deciding any federal question; and, furthermore, that the decision of the Supreme Court of Illinois is based upon a non-federal ground which independently and adequately supports the State court judgment. If we are able to maintain this position, and we confidently expect to do so, then this Court has no jurisdiction of these cases and the writs of certiorari were improvidently granted.

IV.

No Federal Question Is Presented Here. The Decisions of the Supreme Court of Illinois Rest Upon Non-federal Grounds Which Independently and Adequately Support the Judgments of the State Court. The Questions Whether a Suit Has Been Commenced and Whether Brought in a State Court, Are Obviously Procedural Questions, the Decision of Which by the State Supreme Court Is Final. Consequently, This Court Has No Jurisdiction of These Cases.

These suits were brought under the Federal Employers' Liability Act. Sec. 6 of this Act as it existed at the time of the accidents in question provided as follows:

> "No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued.
>
> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. **The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States.**" (Emphasis supplied.) U. S. C. A., Title 45, pp. 515, 516.

Since the accidents in question this section has been amended to substitute "three years" for "two years." As stated before, this is immaterial for the reason that (even if that fact was material) the alleged venue was changed more than three years after the causes of action accrued, so no question arises as to the retroactive effect of the amendment increasing the time within which actions can be brought under the Act.

Sec. 6 of the Act is not a statute of limitation pertaining to the remedy but is a condition of liability constituting a substantial part of the right created. Central of Vermont Ry. Co. v. White, 238 U. S. 507; Phillips v. Grand Trunk Ry. Co., 236 U. S. 662; Atlantic Coast Line Ry. Co. v. Burnette, 239 U. S. 199; Bell v. Wabash Ry. Co., 58 F. (2d) 569. Under these decisions, unlike in the case of a statute of limitation, nothing, not even infancy, mental disability or even fraud on the part of an employer, will extend the time for bringing the cause of action; nor, as held by the Circuit Court of Appeals in the Bell case, supra, will a State statute tolling a statute of limitations extend the time within which to bring an action under the Act.

Furthermore, Sec. 6 of the Act, after giving jurisdiction of cases under the Act to certain federal district courts, provides that "the jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any State court of **competent jurisdiction** shall be removed to any court of the United States."

It will be noted that jurisdiction is given by the statutes only to State courts of "competent jurisdiction," leaving to the States to determine which of its courts are courts of competent jurisdiction to try cases under the Act. The Act does not, and could not confer jurisdiction on any State Court. It simply says to the litigant that if he can find a State court having jurisdiction of a personal injury or death action, and can get service on the defendant, he may maintain his suit in that court.

In Mondou v. New York, N. H. & H. R. Co. (Second Employer Liability cases), 223 U. S. 1, 56-57, this Court said:

> "We deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of State Courts, or to control or

affect their modes of procedure, but only a question of the duty of such court, **when its ordinary jurisdiction, as prescribed by local laws, is appropriate to the occasion,** and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress, and susceptible of adjudication according to the prevailing rules of procedure." (Emphasis supplied.)

In fact, as said in the Mondou case, l. c. 56:

"This amendment, as appears by its language, instead of granting jurisdiction to the State courts, presupposes that they already possessed it."

This case conclusively answers petitioners' arguments as to the construction of this statute, as set forth on page 32 of their brief.

In Walton v. Pryor, 276 Ill. 563, l. c. 568-569, the Supreme Court of Illinois held that the federal Act gave an injured person no right to file suit under the Act in a State court unless that court had jurisdiction to hear and determine such suit. In other words, Congress cannot enlarge or regulate the jurisdiction of State courts or control or affect their modes of procedure. Each State may, subject to the restrictions of the Federal Constitution, determine the limits of the jurisdiction of its courts, the character of the controversies which shall be heard in them and specifically how far it will, having jurisdiction of the parties, entertain in its courts transitory actions where the cause of action has arisen outside its borders. All that Congress can do and has done by Sec. 6 of this Act is to say to a litigant having an alleged cause of action under the Act that if he can find a State court having jurisdiction of a tort action of the kind he has and can get jurisdiction of the person of the defendant, he may bring his suit in the State Court. Decisions in support of this rule of law are many. In all such cases, how-

ever, the State is the sole judge of the jurisdiction of its own courts, and its decisions, as expressed by its highest court, are final upon the question.

In Douglas v. New Haven R. Co., 279 U. S. 377, l. c. 387, this Court said:

> "As to the grant of jurisdiction in the Federal Employers' Liability Act, the Statute does not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned. • • • But there is nothing in the Act of Congress that purports to force a duty upon such courts as against an otherwise valid excuse."

In St. Louis & Iron Mountain Railroad Company v. Taylor, 210 U. S. 281, plaintiff, as administratrix of the estate of George W. Taylor, brought suit in Arkansas under the Federal Employers' Liability Act against the railroad company to recover damages for the benefit of Taylor's widow and next of kin on account of his injury and consequent death, alleged to have been caused by the company's negligence. The accident and death happened in the Indian Territory and the plaintiff obtained a judgment which was affirmed by the Supreme Court of Arkansas. This Court decided that the question of jurisdiction of the State court was not a federal question and that this Court had no jurisdiction to review the decision of the State court holding that it had jurisdiction. In the opinion in that case this Court, on page 285, said:

> "The plaintiff in error contends that of such a cause, triable as it was in the courts of the territory created by Congress, the courts of Arkansas have no jurisdiction. **This contention does not present a federal question.** Each state may, subject to the restrictions of the Federal Constitution, determine the limits of the jurisdiction of its courts, the character of the controversies which shall be heard in them, and specifi-

cally, how far it will, having jurisdiction of the parties, entertain in its courts transitory actions where the cause of action has arisen outside its borders. Chambers v. Baltimore & O. R. Co., 207 U. S. 142, ante, 143, 28 Sup. Ct. Rep. 34. We have, therefore, no authority to review the decision of the state court, so far as it holds that there was jurisdiction to hear and determine this case. **On that question the decision of that court is final.**" (Emphasis supplied.)

In Chambers v. Baltimore and Ohio Railroad, 207 U. S. 142, 147, 52 L. Ed. 143, 146, this Court said:

"But, subject to the restrictions of the Federal Constitution, the state may determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them."

In John v. Paullin, 231 U. S. 583, 58 L. Ed. 381, at page 585, this Court said:

"Without any doubt, it rests with each State to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the State law and practice in this regard are no less applicable when federal rights are in controversy than when the case turns entirely upon questions of local or general law."

It cannot be said that the Illinois courts, by refusing to assume jurisdiction in the instant case, denied petitioner, as far as jurisdiction is concerned, any right or privilege to prosecute his suit in a State court pursuant to Section 6 of the Federal Employers' Liability Act (U. S. C. A., Title 45, Sec. 56), which provides that the jurisdiction of the courts of the United States under said chapter shall be concurrent with that of the courts of the several States, which when construed with the next sentence of the section means State courts of competent jurisdiction. This

Act does not confer any jurisdiction upon State courts or in any way enlarge their jurisdiction, as Congress is without authority to confer jurisdiction upon a State court or any other court which it has not ordained or established. This Court had occasion to construe this section of the Act in question in the Second Employers' Liability Cases, 223 U. S. 1, from which we have heretofore quoted in this argument.

In Walton v. Pryor, supra, 276 Ill. 563, the Supreme Court of Illinois in construing this section of the Federal Act held that whether a Circuit Court in Illinois had jurisdiction of an action for damages under the Federal Employers' Liability Act must be determined by the laws and Constitution of Illinois, as Congress cannot confer jurisdiction upon any court which it has not created, and that there was no restriction in the Federal Constitution upon the power of a State to determine the limits of the jurisdiction of its courts, except that the State must give to citizens of other States the same rights that it accords to its own citizens. In that case the Court, on page 569 of the opinion, said:

> "In view of the powers of the Federal Government and the States and in the light of the uniform decisions relating to the subject, this provision can only mean that when the jurisdiction of the courts of a State, **as fixed by local laws**, empowers them to hear and determine a certain class of actions, an action of that class arising under federal law may be enforced as of right in the state court." (Emphasis supplied.)

This doctrine has been consistently followed both by this Court and State courts. Among the numerous decisions upholding this rule, we call the Court's attention to Minneapolis & St. Louis R. R. Co. v. Bombolis, 241 U. S. 211, 222, 60 L. Ed. 961, 965, and Taylor v. Southern R. Co., 350 Ill. 139.

Whether or not a State court has jurisdiction of an alleged cause of action, although begun under the Federal Employers' Liability Act, does not present a federal question.

St. Louis, I. M. & S. Ry. Co. v. Taylor, 210 U. S. 281, 285;
Mondou v. N. Y. N. H. & H. R. Co., 223 U. S. 1, 58;
Chambers v. B. & O. R. Co., 207 U. S. 142, 148-149;
John v. Paullin, 231 U. S. 584;
Manning v. Ketcham, 58 Fed. (2d) 948, 949.

State courts derive their jurisdiction from the Constitution and laws of the States. The Federal Employers' Liability Act does not attempt to enlarge or regulate the jurisdiction of State courts, but only gives an injured person the right to file suit, under that Act, in a State court where such a court, **under the local law, has jurisdiction** to hear cases of that character, as Congress cannot confer jurisdiction upon any court which it has not created.

St. Louis, I. M. & S. R. Co. v. Taylor, 210 U. S. 281, 285;
Chambers v. B. & O. R. Co., 207 U. S. 142, 148-149;
Mondou v. N. Y. N. H. & H. R. Co., 223 U. S, 1, 58;
Minneapolis & St. L. R. Co. v. Bombolis, 241 U. S. 211, 222;
Walton v. Pryor, 276 Ill. 563, 566-567;
Mo. River Tel. Co. v. First Natl. Bank, 74 Ill. 217, 115 N. E. 2;
Dougherty v. American McKenna Co., 255 Ill. 369, 99 N. E. 619;
Taylor v. Southern Ry. Co., 350 Ill. 139, 182 N. E. 805.

The State laws and practice relative to the jurisdiction of State courts, the mode, time and manner of invoking that jurisdiction and the rules of practice to be applied in

its exercise are no less applicable when federal rights are in controversy, than when the case turns entirely upon questions of local or general law.

> John v. Paullin, 231 U. S. 583;
> Goldenberg v. Murphy, 108 U. S. 162;
> Chesapeake & O. R. Co. v. DeAtley, 241 U. S. 310.

In the cited case of Goldenberg v. Murphy, Collector, 108 U. S. 162, Goldenberg brought a suit in the State court against Murphy, a United States Collector, to recover back federal duties paid under protest and alleged to have been illegally exacted. The applicable federal statute provided that suit must be "brought within 90 days after the decision of the Secretary." The time for commencing the suit expired on August 26. An effort was made to serve a summons without intervention of the sheriff. This could not be done, so summons from the State court was delivered to the sheriff on the day before the 90 days expired and served on the Collector one day after the expiration of the 90 day period. The New York statute provided that delivery of a summons to a sheriff with intention of securing service was the commencement of a suit. The entire controversy involved federal law but the suit was brought in the State court. In holding that the question of whether a suit was commenced was a question of State law, this Court said, l. c. 163:

> "A suit is brought when in law it is commenced, and we see no significance in the fact that in the legislation of Congress on the subject of limitations the word 'commenced' is sometimes used, and at other times the word 'brought.' In this connection the two words evidently mean the same thing, and are used interchangeably. As this suit was begun in a State court of New York, the laws of that State must determine when it was brought, and as that is prescribed by statute, we have no need of inquiry as to the practice in other States, or the rules of the common law."

We have heretofore quoted from John v. Paullin, 231 U. S. 583, l. c. 585, relative to the control of States of the procedure and practice of their own courts. In M. & St. L. R. R. Co. v. Bombolis, Admr., 241 U. S. 211, the question arose in a Federal Employers' Liability Act case as to whether a statute of Minnesota providing for a jury verdict concurred in by less than the entire panel was applicable to a case brought under the federal Act. This Court in sustaining the Minnesota statute as applying to a case under the Act, held that while a State court may enforce a right created by federal statute, such court does not while performing that duty derive its authority as a court from the United States but from the State; that consequently the Seventh Amendment to the federal Constitution did not apply and that a verdict in a Federal Employers' Liability Act case in a State court could constitutionally be rendered by the concurrence of less than the whole of the panel, even though the case if tried in the federal courts would require the concurrence of all of the members of the jury.

In C. & O. Ry. v. DeAtley, 241 U. S. 310, local rules of practice and procedure under the State practice were held to be applicable in Federal Employers' Liability Act cases, even though such rules and practices were contrary to those used in the federal courts.

In L. & N. R. R. Co. v. Holloway, Admr., 246 U. S. 524, this Court held in a Federal Employers' Liability Act case brought in a State court that whether a State court would obey a local rule of practice requiring the substitution of correct instructions for defectives ones requested was a question of State law and not reviewable by this Court.

It would seem from these cases that it is clearly established that the question of when a suit is commenced in a State court, even though it be to enforce a federal right, is a question of State practice upon which the decision of

the highest court of a State is final and no reviewable federal question is presented. In fact as we shall presently show, petitioners in their petitions concede this applicable rule of law.

The proper construction, interpretation and effect of a State statute being a question of local law and not federal law, the decision of a State court thereon is not subject to review by this Court.

> Knights of Pythias v. Meyer, 265 U. S. 30;
> Hotel & R. E. Int. v. Wisconsin E. R. Bd., 315 U. S. 437;
> Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U. S. 673, 680;
> Morehead v. People ex rel. Tipaldo, 298 U. S. 587, 609;
> Senn v. Tile Layers' Union, 301 U. S. 468, 477;
> Moore v. I. C. R. R. Co., 312 U. S. 630, 634.

The United States Supreme Court, on writ of error, must accept, as final, the ruling of the State court of last resort on all matters of State law.

> Fox River Paper Co. v. R. R. Com., 274 U. S. 651, 655;
> Sauer v. N. Y., 206 U. S. 536;
> Kaukauna W. Power Co. v. Green Bay & M. Canal Co., 142 U. S. 254, 272, 277;
> Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U. S. 673, 680.

Whether or not a State court has jurisdiction of a case is a question exclusively for the State court and its decision is not reviewable in the United States Supreme Court on certiorari.

> Smith v. Adsit et al., 16 Wall. 185.

In the petition in the Herb case (p. 11), and repeated in the petition in the Belcher case (p. 11), and repeated

verbatim in their present brief (pp. 15-16), petitioners, citing the above cases of Goldenberg v. Murphy, 108 U. S. 162; C. & O. R. Co. v. DeAtley, 241 U. S. 310, and M. & St. L. R. Co. v. Bombolis, 241 U. S. 211, and the Federal Employers' Liability Act, state that "The question of when a suit is commenced in a State court is a matter which the Federal courts recognize as being controlled generally by the practice in the particular State."

Again, in the argument in the Herb petition (H. R. 19) and repeated in the Belcher petition (p. 11), and repeated verbatim in their present brief (p. 27), petitioners state that in view of the well settled doctrines that in actions brought in a State court the Federal courts will follow the practice of the State in determining when an action is commenced (citing cases), and that the practice and procedure in actions brought under the Federal Employers' Liability Act in a State court will be governed by the law of the State in which such court is located (citing cases), there can be little room for doubt about the applicability of the Illinois doctrines in determining whether the cases were "commenced" within the time required by Sec. 6 of the Act. With these statements we agree. It is difficult to see, in view of these concessions, how petitioners can now contend that a federal question is here involved. In granting these petitions this Court must have overlooked the fact that petitioners had so conceded the law to be as we contend.

Again in the petition in the Herb case (p. 7), and repeated in the petition in the Belcher case, under "Questions Presented," petitioners say:

> "Only one basic question is raised in this Court on this record, viz.: Whether an action under the Federal Employers' Liability Act, instituted within two years from the day the cause of action accrued, in a State court which was without jurisdiction to hear and determine the merits of the action **but which had a**

limited jurisdiction to change the venue of such action to a court having complete jurisdiction thereof, the venue of which action was changed to such latter court more than two years after the cause of action accrued, is 'commenced within two years from the day the cause of action accrued' as required by Section 6 of the Federal Employers' Libility Act (Act of Apr. 22, 1908, c. 149, § 6, 35 Stat. 66, as amended by Act of Apr. 5, 1910, c. 143, § 1, 36 Stat. 291, U. S. C. 1934 Ed., Title 45, § 56).'

"Subsidiary to this main question, there is the question of whether Section 6 of the Federal Employers' Liability Act requires suits brought under that Act in State courts to be commenced in a State court which has full and complete jurisdiction over the action."

In their present brief, in the "Specification of Errors" (p. 13), petitioners in slightly different language present the same issues for decision here, laying particular stress upon their alleged right under the Venue Act to change the venue to the Circuit Courts and thus date the commencement of the suits back to the date when they were filed in the City Courts which had absolutely no jurisdiction of the subject matter thereof. In their present brief (p. 19) the basic and incidental questions, said to be involved, are stated in the same language as used in the "Questions Presented" in the petitions.

Therefore, though petitioners in both cases conceded that the City Courts did not have jurisdiction to hear and determine the actions, they contended that such courts had a limited jurisdiction to change the venue, that because the venue was changed and the papers were filed in the Circuit Courts after the period provided by statute, yet the commencement of the suits dates back to the time when they were filed in a court having no jurisdiction of them and were therefore commenced within two years from the day the cause of action accrued, and contended subsidiary to that that there is a question of whether Sec. 6 of the Act

requires suits brought under that Act in State courts to be commenced in a State court which has full and complete jurisdiction over the action. Petitioners therefore beg the question.

We have conclusively shown that the City Courts had no jurisdiction of any kind of the subject matter of these suits, that no limited jurisdiction existed and that all of these questions of jurisdiction were State questions which have been decided adversely to petitioners by the highest Illinois court and are not reviewable here.

In the Herb case (384 Ill. 237) the Court expressly stated in its opinion that it had been determined that City Courts in Illinois were without jurisdiction to hear and determine the subject matter of any action the cause of which arose outside of the territorial limits of the City Court in which the action was pending, and said:

> "The material point for consideration is whether the plaintiff has commenced an action within two years of the date of his injury in a court having jurisdiction to hear and determine the same. * * * The question involved relates to the effect of the proceedings had in a court wholly incompetent to render a valid judgment because, if the judgment to be rendered would be void, it necessarily follows the preliminary proceedings of the court necessary to rendition of judgment must likewise be void. If the court has no jurisdiction of the subject matter for judgment there can be no jurisdiction giving effect to process or pleadings. If judgment had been entered in the city court it would have been absolutely void" (H. R. 27).

And the Court in this opinion further said:

> "If the ultimate object to be obtained in a suit at law, namely, a judgment, is utterly void, it is difficult to understand how any of the preliminaries to such a judgment, such as summons, pleadings, interlocutory

orders and the like, have any effect when the result, had such proceedings been completed in the first court, would have been a nullity" (H. R. 29).

The Court in this case further held:

"It is clear a suit was not commenced by filing the present suit in the City Court of Granite City by issuing summons or filing a complaint. **Lacking requisite jurisdiction because of the provisions of the Constitution limiting it to cases arising within the limits of the city such Court was wholly incompetent to render any judgment or to authorize any proceedings which would result in a judgment.** When the case was transferred to the Circuit Court of Madison County some five years after the date of the accident by the filing of the transcript of orders entered in the City Court and the pleadings and other documents, **there was no commencement** of a suit, but only the receipt of papers from a court in which it was impossible to commence one because of its lack of jurisdiction. To hold the suit was started in the Circuit Court at the time when it was attempted to be commenced in the City Court is not only to decide something which is obviously not the fact, but also to give effect to the proceedings in another court which up to that time must be considered a nullity. To so hold would, in effect, revive a cause of action already barred by limitations and deprive the defendant of a vested right. Cooley's Constitutional Limitations, page 448" (H. R. 32). (Emphasis supplied.)

The Court in its opinion then added:

"This determination makes it unnecessary to pass upon either the constitutional question involved or the validity of the change of venue statute" (H. R. 33).

By reference and adoption these statements are equally applicable to the Belcher case (Petition p. 11).

In so holding the Supreme Court of Illinois was passing upon a question involving wholly and solely the jurisdic-

tion of its own courts and the practice and procedure therein. We have pointed out that whether a State court has jurisdiction of a case under the Federal Act does not present a federal question. The Congress cannot and has not attempted to enlarge or regulate the jurisdiction of State courts or practice and procedure therein. State laws and practice relative to the jurisdiction of State courts, the mode, time and manner of invoking that jurisdiction and the rules of practice to be applied in its exercise are no less applicable when federal rights are involved than when local rights are involved. The proper construction, interpretation and effect of a State statute and the rules of practice and procedure being questions of local law and not of federal law, the decision of a State court thereon is not subject to review by this Court, and the decisions of the Illinois Supreme Court rest upon a non-federal ground, viz.: what constitutes the commencement of a suit in a State court in Illinois and what is the jurisdiction of that Court. The decision of the Supreme Court of Illinois upon that question is upon a non-federal ground which independently and adequately supports the judgment of the State court.

It may be argued that because the suits were brought under a federal statute the time of the commencement thereof is a federal question and not a State question. Such cannot be and is not the case. The federal statute merely requires suit to be commenced within two years. **Whether that suit is commenced in a State court is wholly a question for the State courts to determine.** Without repetition, we call attention to the opinion of the Supreme Court of Illinois in the Herb case, because it adequately supports our position and clearly shows that that Court was passing upon a State question when a suit is commenced in a State court, which question it had the sole right to determine. Petitioners have conceded that the question of when a suit is commenced in a State court is

solely a question for the State court to determine. The commencement of a suit does not involve a federal question because a suit is not commenced until brought in a court of competent jurisdiction. No federal question is involved in any way. It was wholly a State question concerning the jurisdiction of State courts.

Petitioners could not contend that a suit was commenced if it had been started in the probate court, in the county court, before a justice of the peace, in the appellate court or in the Supreme Court. To commence a suit requires that it be brought in a court of competent jurisdiction to hear and determine the subject matter of the controversy. So far as commencing a suit within the legal meaning of the words, petitioner might just as well have written a letter to the Judge of a court, or have written the Chief Justice or one of the Justices of this Court, or started the suit in a justice of the peace court. Doing so in any one of these ways would have been just as effective to commence a suit within the legal meaning of the word as to file it in a court having no jurisdiction of the subject matter, even though that court issued summons and that summons was served.

Therefore, we submit that the Supreme Court of Illinois, in holding that no suits were commenced in the City Courts, was deciding and determining a non-federal question, and consequently this Court has no jurisdiction of these cases and the writs were improvidently issued. The Illinois Supreme Court did not even hold that the filing of the papers in the Circuit Court constituted the commencement of suits there. In fact, as we have pointed out, it held to the contrary (H. R. 32). All that it held was that no papers were filed in a court of competent jurisdiction until after the statutory period. The City Courts had, as we shall hereafter show, no jurisdiction to order the changes of venue. But, be that as it may, no suits were commenced in courts of competent jurisdic-

tion within the statutory period. The Illinois Supreme Court, the final arbiter, has so held. Even if the City Courts had jurisdiction to change the venue of the suits, which we deny, yet no suits were ever commenced or even any papers filed in a court of competent jurisdiction until long after the statutory period (see Herb opinion, l. c. 247, H. R. 33).

It might be argued that an injustice had been done petitioners by affirming these judgments of the Illinois Supreme Court. If this be so, petitioners have only themselves to blame. One of these accidents occurred at Decatur, Illinois; the other at Nashville, Tennessee. So far as the Herb case is concerned, it could have been brought, and service secured, in at least twenty-five circuit courts in Illinois having jurisdiction of it, and in any one of the District Courts of any one of the three Federal Districts in Illinois. In the Belcher case petitioner could have sued in any one of seven circuit courts in Illinois or in the Federal District Court for the Eastern District of Illinois. He could have sued at home—at Nashville, Tennessee. The Court will take notice, we think, that the L. & N. Railroad Company is a large railroad system, extending through many States, and that the Wabash Railway Company does likewise. These suits could in all probability have been brought in any one of seventy-five to one hundred jurisdictions. Petitioners sought to come far from home to bring their suits in city courts in Illinois. If they have lost any rights, they alone are to blame; and, in addition, that does not in any way change the legal aspects of the situation or the rules of law applicable to the factual situation.

We do not raise any question as to the legal right, even if not the moral right, of petitioners to go to other jurisdictions to bring their suits in courts of appropriate jurisdiction. Such legal right is confirmed by the decisions of this Court in B. & O. R. R. Co. v. Kepner, 314 U. S. 44,

and Miles v. I. C. R. R. Co., 315 U. S. 698. As Mr. Justice Jackson said in his concurring opinion in the Miles case, l. c. 706:

> "* * * the real issue is whether a plaintiff with a cause of action under the Federal Employers' Liability Act may go shopping for a judge or a jury believed to be more favorable than he would find in his home forum. An advantage which it is hoped will be reflected in a judgment is what makes plaintiffs leave home and incur burdens of expense and inconvenience that would be regarded as oppressive if forced upon them."

So, while plaintiffs may go shopping away from home in their efforts to seek a favorable forum, yet when they enter courts of doubtful or no jurisdiction, they do so at their own risk, and it might be said that, by analogy at least, the doctrine of caveat emptor would apply to them.

Jurisdiction in these cases must not be confused with venue. The Illinois decisions do not deny jurisdiction to City Courts in these cases because of improper venue. Jurisdiction is denied solely because of a total want of jurisdiction of the subject matter and because jurisdiction thereof cannot be constitutionally given to City Courts where the cause of action arises outside the limits of the city in which the City Court is held.

The decision of the Supreme Court of Illinois upon whether or not a suit was commenced is a State question and not a federal question; and the decision of the Supreme Court of Illinois on that question is final and cannot be reviewed here. The only two questions presented to the Supreme Court of Illinois were (1) that suits were "commenced" in the City Courts within two years, and (2) that the City Courts had a limited jurisdiction to change the venue (see Petition for Rehearing) (H. R. 31, B. R. 31). On the first issue the Illinois Supreme Court decided directly against petitioner. Under Point VI of

this argument we shall discuss the second issue. Throughout their entire brief petitioners seek to have this Court construe and apply the laws and decisions of the Illinois Supreme Court upon these questions, in spite of the fact that the Illinois Courts are final upon these questions and are not subject to review here, because no federal questions are involved.

V.

Even if the Decision of the Supreme Court of Illinois on the Question of Whether or Not a Suit Was Commenced So as to Toll the Statute Was Not Final, as We Strenuously Contend It Was, Yet That Decision Was Right and Is Sustained by Applicable and Pertinent Decisions and Rules of Law.

As conceded by petitioners and supported by the authorities heretofore set forth, when a suit is brought in a State court, even though it involves a suit under a federal statute, the laws of that State are controlling in determining the question whether a suit was actually commenced in the State court, as was the case in Goldenberg v. Murphy, Collector, 108 U. S. 162; yet, even if a federal question was involved, the decision of the Supreme Court of Illinois that no suit was commenced in these cases is supported by the overwhelming weight of authority. The opinion of the Supreme Court of Illinois in the Herb case, followed in the Belcher case, is a most convincing authority in support of that position.

In 14 Am. Jur., Sec. 167, p. 367, it is said that a universal principle, as old as the law, is that the proceedings of a court without jurisdiction are a nullity, and its judgment without effect, either on the person or property, and that a court without jurisdiction over the subject matter of a particular case can only dismiss the case for want of jurisdiction and possesses no other power or authority.

The city courts are courts of inferior and limited juris-

diction, and no presumption exists in favor of the jurisdiction of such courts as exists in the case of courts of general jurisdiction. 21 C. J. S. 153.

Where a court is without jurisdiction in a particular case, its acts and proceedings can be of no force or validity and are a mere nullity and void, not voidable. 21 C. J. S. 177. This Court so held in Vallely, Trustee, v. Northern Fire & Marine Ins. Co., 245 U. S. 348, l. c. 353, where it was said:

> "Courts are constituted by authority and they cannot go beyond the power delegated to them. If they go beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable but simply void, and this even prior to reversal."

Upon determining that it has no jurisdiction, a court not only may, but should, refuse to proceed further and determine other objections or issues or the rights of the parties; and a judgment of dismissal for want of jurisdiction or without prejudice should be entered, after which the court has no authority to proceed. 21 C. J. S. 179.

In Mail Co. v. Flanders, 12 Wall. 130, l. c. 135, this Court held that where the court is without jurisdiction it is in general irregular to make any order in the cause except to dismiss the suit. However, in this case this Court held that the rule does not apply to the action of the court in setting aside such orders as have been improperly made before the want of jurisdiction was discovered. This is the only exception to the rule, and, of course, the exception is based upon the preservation of orderly records and the expunging from the court records of void orders made by a court wholly without jurisdiction. The same exception is recognized in the rule laid down in 21 C. J. S. 179. To the same effect is Cleveland Ins. Co. v. Globe Ins. Co., 98 U. S. 366, l. c. 375.

There is a well considered case of Corbett v. Boston & Maine R. R. Co., 219 Mass. 351, and reported in 12 A. L. R. 683, to the effect that a court without jurisdiction cannot enter judgment in favor of either party but can only dismiss the case for want of jurisdiction. Other well considered Illinois cases, in addition to the instant case, to the same effect are The People v. Crowe, 387 Ill. 53-55; People ex rel. v. Shurtleff, 355 Ill. 210, l. c. 217; People ex rel. v. Thompson, 358 Ill. 81, l. c. 92, and People v. Superior Court, 234 Ill. 186. While all of these cases are habeas corpus cases, the principle applicable to those cases is equally applicable to all cases. Also see Gill v. Lynch, 367 Ill. 203; Welton v. Hamilton, 344 Ill. 82; O'Shea v. Farrelly, 302 Ill. 125, and Aurora v. Schoeberlein, 230 Ill. 496, to the effect that all acts and orders of a court having no jurisdiction of the subject matter are null and void and of no force and effect and can even be attacked collaterally.

In the Herb case the Supreme Court of Illinois said:

> "The fallacy of this argument rests in the fact that it becomes necessary to give validity to proceedings in the court, the judgment of which, if rendered upon such proceedings, would be wholly void. • • • It is difficult to understand how any of the preliminaries to such a judgment, such as summons, pleadings, interlocutory orders and the like, have any effect when the result, had such proceeding been concluded in the first court, would have been a nullity."

In Crowley v. Southern Railway Co., 139 Fed. 851, the Alabama Legislature had attempted to create a circuit court with different divisions, which act was held unconstitutional by the Supreme Court of Alabama. In that case the cause of action was claimed to have been saved because a summons had been issued out of such illegal division of the circuit court. The court held that the illegal division

of the circuit court being without jurisdiction, there was no authority for filing the summons and complaint in that court, that the summons and the service thereof were a nullity and that the attempt to institute and commence a suit in the illegal court was ineffectual to institute a suit in the real circuit court, the same as if plaintiff had filed the summons and complaint with some merchant.

In Inter-Southern Life Ins. Co. v. Pierce, 31 S. W. (2d) 692, it was held that a court having no jurisdiction could not make any valid order or decree in the case and had no power to transfer the case to another county. To the same effect is Willing v. Provident Trust Co., 21 Fed. Sup. 237, l. c. 238.

In Manning v. Ketchem, 58 Fed. (2d) 948, l. c. 949, the Court said:

> "When a judge acts in the clear absence of jurisdiction, i. e., of authority to act officially over the subject matter in hand, the proceeding is coram non judice. In such a case the judge has lost his judicial function. * * * In State ex rel. Egan v. Wolever, 127 Ind. 306, 26 N. E. 762, 763, the court said: 'The converse statement of it is also ancient. Where there is no jurisdiction at all there is no judge; the proceeding is as nothing.'"

Other cases to the effect that the filing of a complaint in a court having no jurisdiction over the subject matter, and the issuance of summons and the service thereof, does not constitute the commencement of a suit are: Vaught v. U. & S. R. R. Co., 132 Tenn. 679, 179 S. W. 314; Fairclough v. Southern Pac. Co., 157 N. Y. S. 862; Gulf, C. & F. S. Ry. Co. v. Gordon (Tex.), 218 S. W. 74; Fidelity Trust Co. v. Gill Car Co., 25 Fed. 737, and Schroeder v. Merchants and Mechanics Ins. Co., 104 Ill. 71.

As said by the Supreme Court of Illinois in the instant case, the filing of the complaint, the issuance of summons

thereon and the service of such summons, all in and out of a court having no jurisdiction of the subject matter, were wholly null and void, that no suit was pending by reason thereof, that the summons and service were a nullity and that respondents could have disregarded the summons, let default be taken against them, the judgment thereon could be void and respondents' property could not be reached by execution under such a judgment. While, of course, as we have shown, this was clearly a State question to be determined alone by the courts of Illinois, does not present a federal question and could not be reviewed here, yet if these judgments were reviewable here, they are supported not only by the Illinois decisions, but also by the overwhelming weight of authority everywhere, including well-considered cases in this Court.

VI.

The City Courts Did Not Have Any Jurisdiction, Limited or Otherwise, of These Suits; Did Not Have Even a Limited Jurisdiction to Change the Venue to the Circuit Courts, and No Such Jurisdiction Could Constitutionally Be Conferred Upon City Courts. Even if This Question Was Debatable, the Sole Jurisdiction to Decide It Would Rest in the Supreme Court of Illinois, and Its Decision Would Not Present a Federal Questions for Review in This Court.

The petitions for certiorari in these two cases are substantially the same; in fact, the "Questions Presented" and "Summary of Reasons for Allowance of Writ" are exactly the same in each of the petitions. In the petition in the Herb case, starting at page 11, appears a supporting brief, followed by an argument. In the Belcher petition (p. 11) it is stated that no supporting brief or argument is filed in that case because the case involves a parallel set of facts and identical questions of law as in

the Herb case, and consequently petitioner in the Belcher case adopts the supporting brief and argument filed in behalf of the Herb petition. In their present brief petitioners, conceding that the two cases present identical questions of law, present the same argument in both cases.

At various places in the petition, supporting brief and argument and in the present brief reference is made time and time again to the fact that the City Courts had limited jurisdiction over these cases. For example, in the "Questions Presented" in the Herb petition (p. 7) it is said that the City Courts had a limited jurisdiction to change the venue. This is repeated in the Specifications of Errors (p. 13). Again, under II (a) (Herb petition, p. 8) it is said that the City Courts had a limited jurisdiction over the action. Again, in the argument it is repeatedly stated that the City Courts had a limited jurisdiction over these suits, particularly for the purpose of ordering change of venue to the Circuit Courts. Extensive argument appears in the Herb petition (pp. 14 to 19) and in the present brief (pp. 19 to 27) from which plaintiffs' counsel infer that City Courts have a limited jurisdiction over every suit or proceeding, brought in a wrong City Court, to change the venue of such suit to a proper court; that a suit instituted in a court having no jurisdiction of the subject matter constitutes the commencement of an action by reason of that court having a limited jurisdiction to change the venue to a proper court, and that even though a suit is brought in a court having no jurisdiction of the subject matter, yet if that court has a limited jurisdiction to change the venue to a court having full jurisdiction, it is merely a continuation of the first suit, and the date of the commencement of the suit is the date of the filing of the same in the wrong court, and that when, on change of venue, the papers are filed in a proper court, the time of commencing the suit is carried back to the time when it was filed in the wrong court.

Again, on page 21 of the petition in the Herb case, it is said that "the City Court of Granite City was not wholly without jurisdiction of petitioner's action, although its jurisdiction over his action was a limited one—limited to the granting of a change of venue to a court having full jurisdiction."

This statement is repeated in the present brief (p. 30). In fact, in the present brief, eight pages of the argument out of a total of fifteen pages are devoted to a discussion of the validity, application and constitutionality of Sec. 36 of the Venue Act and to the alleged failure of the Illinois Supreme Court to hold such statute valid, applicable and constitutional.

Petitioners have therefore rested their whole case upon their claim that the City Courts had a limited jurisdiction to change the venue under and by virtue of the provisions of Sec. 36 of the Illinois Venue Act, Ill. Rev. Stat., Chap. 146, p. 3226, the material part of which is as follows:

> "That wherever any suit or proceeding shall hereafter be commenced, in any court of record in this State, and it shall appear to the court where the same is pending, that the same has been commenced in the wrong court or county, then, upon motion of either or any of the parties to such suit or proceeding, the court shall change the venue of such suit or proceeding to the proper court or county, and the same, when the venue shall be so changed, shall be then pending and triable in such court or county to which the same shall be so changed the same as in other cases of change of venue."

As we have pointed out, the Supreme Court of Illinois has consistently held that no jurisdiction of any kind could constitutionally be granted to a City Court in a suit arising outside of the limits of the city in which such City Court is held. The Supreme Court of Illinois has gone so far, as we have pointed out, to hold that a summons issued

in such a case was void; that the defendant even though served with summons could disregard the service, let default be taken against him and the judgment would be void and no execution could be issued thereon. The Court could not have used stronger language to show the complete and utter lack of jurisdiction of City Courts over causes arising outside the city limits.

An examination of the petitions for rehearing in the Supreme Court of Illinois (H. R. 35 and B. R. 31) clearly demonstrates that petitioners' complaint about the decisions of the Supreme Court of Illinois was that that Court had not held in its opinions that the City Courts had a limited jurisdiction to change the venue.

The motions for change of venue appear in the printed record (H. R. 17 and B. R. 17). In these motions, petitioners, conceding that their suits had been brought in courts without jurisdiction, invoked this venue statute for the purpose of removing the causes to the Circuit Courts of the alleged proper counties. By the motions to dismiss (H. R. 18 and B. R. 21) respondents directly raised the questions that this statute was not applicable to City Courts or other courts of special jurisdiction, having no jurisdiction of the subject matter, and that if it was so construed to confer power on City Courts in cases of this character to change the venue to a Circuit Court, the statute, if so construed and applied, would be unconstitutional and in violation of Sec. 1 of Article VI of the Illinois Constitution, for the reason that the General Assembly could not constitutionally confer power or jurisdiction upon a City Court to grant such a change of venue in a case over which it had no jurisdiction whatever.

In support of his position, petitioner cited the cases of Central Illinois Public Service Co. v. Industrial Com., 293 Ill. 62; Gill v. Lynch, 367 Ill. 203, and Herb v. Pitcairn, 384 Ill. 237, l. c. 245. The Supreme Court of Illinois, in construing its holding in the Central Illinois Public Service

Co. case, said that it there held that the Venue Statute in Illinois as applying to a Circuit Court having no jurisdiction over the subject matter has no other purpose than to authorize a transfer to another Circuit Court which does have jurisdiction, and stated that that decision was so interpreted in the Gill case. After discussing these two cases, the Supreme Court of Illinois said in the Herb case, l. c. 246 (H. R. 32), that the distinction to be drawn is that if a case is improperly filed in a court having jurisdiction of the cause generally but without its territorial jurisdiction, it may be transferred to the proper Circuit Court. The Court then distinguished between the filing of a case in a court having general jurisdiction and a court having no jurisdiction, and stated that the interpretation of the Venue Statute in the Gill case is conclusively against petitioner.

However, after practically holding that the Venue Statute did not apply to a case of this character in City Courts and would be unconstitutional if it was so held to apply, the Supreme Court of Illinois did not pass directly upon these questions, but contented itself with holding that under the State law no suit was ever commenced within the legal meaning of that word, and said in the Herb case, l. c. 244 (H. R. 40): "Conceding, but not deciding, that in proper cases a court without jurisdiction of the subject matter could by statute be authorized to transfer its proceedings to a court having jurisdiction, still the condition that the action be commenced within two years is not met."

In substance, therefore, in the Herb case the Supreme Court of Illinois held that jurisdiction could not be conferred upon the City Court to change the venue in a case over which it had no jurisdiction of the subject matter. After substantially holding this, however, the Supreme Court proceeded to state that it was not deciding the case on that question but was deciding it upon the fact that no

suit could be or ever was legally commenced in either of the City Courts in question.

The Supreme Court of Illinois had in the Industrial Commission case, supra, 293 Ill. 62, and the Lynch case, supra, 367 Ill. 203, held that even though the Legislature did not confer jurisdiction of the subject matter of a statutory proceeding on a Circuit Court, yet a Circuit Court being a court of general jurisdiction, it could confer upon a Circuit Court the special jurisdiction to change the venue of the cause to a proper court.

Petitioners in their brief (p. 26) quote correctly from the decision of the Illinois Court in the Herb case (384 Ill., l. c. 246), although expressing doubt as to the meaning of the language used, but deducing therefrom that it is manifest that the part of the opinion quoted establishes that the Illinois Court apparently held that the City Courts had a limited jurisdiction to change the venue of the suits to the Circuit Courts. The quoted part of the opinion sustains our position. The City Courts did not have jurisdiction **generally** of the instant cases. The Illinois Court did not hold that City Courts had general jurisdiction of a cause because of any question of territorial jurisdiction. It held that City Courts did not have, and cannot constitutionally be given, jurisdiction of any cause arising outside the limits of the city where the court is located, and that the only jurisdiction conferred or that could constitutionally be conferred was jurisdiction of the subject matter in cases arising within the city where the court was held. Counsel in their argument continuously confuse jurisdiction and venue. A court may have jurisdiction generally of the subject matter but in that court there may not be proper venue for the suit. In fact, in the Werner case, supra, the Illinois Supreme Court held as follows:

> "The appellee contends that since his action is transitory and not local the city court had jurisdic-

> tion over the case. The issue raised is not one of venue but a question as to power and authority of a court to hear a particular case."

But here there was not and could not be jurisdiction of the subject matter because of total lack of jurisdiction of the subject matter and not on account of any question of venue. The City Courts had no jurisdiction, limited or unlimited, and no jurisdiction general or otherwise of the subject matter of the suits. The Illinois Supreme Court has so held in clear, unmistakable and understandable language.

In the Werner case, supra, 379 Ill. 559, l. c. 566, the Supreme Court of Illinois, in referring to another section of the Venue Act and answering an argument that had been made, said:

> "Reference is made to section 14 of the City Court Act (Ill. Rev. Stat. 1941, chap. 37, par. 346), which provides for change of venue from one city court to another, to a circuit court 'or to any other court of competent jurisdiction.' Action authorized by this section is on the assumption that the city court from which the change of venue is sought had jurisdiction to hear the case. It is not an attempt to prescribe jurisdiction, that being covered by section 1, previously considered."

The Court thereby held that in order to justify a change of venue under Sec. 14 (and the same rule applies to Sec. 26 of the Venue Act), change of venue could only be sustained upon the assumption that the City Court from which the change of venue was sought had jurisdiction to hear the case.

As stated before, Circuit Courts of Illinois are courts of general jurisdiction, with unlimited jurisdiction in all law and equity cases, and with such statutory jurisdiction as may be conferred upon them. Even though a Circuit Court had no jurisdiction over the subject matter of a

statutory suit filed in that court, yet the General Assembly might constitutionally confer upon the Circuit Court, being a court of general jurisdiction, the special jurisdiction to change the venue to a proper court or county. However, the Supreme Court of Illinois has held that no jurisdiction of any kind can constitutionally be conferred upon a City Court by the General Assembly, except where the cause of action arises in the city where such court is held. Consequently, our position before the Supreme Court of Illinois was and is now, that constitutionally the General Assembly could not confer upon City Courts the special jurisdiction to change the venue of causes over which they had no jurisdiction.

It should be noted that in the Gill and Industrial Commission cases, discussed by the Illinois Supreme Court, the cases involved statutory proceedings and not suits at law or in equity, and therefore the General Assembly could give or not give jurisdiction thereover to Circuit Courts.

Furthermore, the Supreme Court of Illinois said in the Herb case, l. c. 247 (H. R. 33):

> "In this case jurisdiction of the suit was wholly lacking until July 31, 1942 (if we consider the change of venue act valid), and at this time the condition imposed upon the plaintiff with respect to bringing his suit had expired by lapse of time. This determination makes it unnecessary to pass upon either the constitutional question involved or the validity of the change of venue statute."

If it can be said that the Supreme Court of Illinois has not passed upon this question, either in the Herb opinion or the other opinions, yet the final determination of this question is one for the Supreme Court of Illinois and not a question to be determined by this Court. If this was the material turning point in this case, the Supreme Court of Illinois would be the final arbiter to pass upon that question. See Huddleston v. Dwyer, decided May 15, 1944, and reported in 64 Sup. Ct. Rep. 1015, ... U. S. .....

However, it is not material here to determine whether the Supreme Court of Illinois has passed upon this question, or whether it should pass upon it. The Supreme Court of Illinois has decided these cases upon adequate non-federal grounds which are not reviewable here. Even if they were reviewable here, the cases have been properly decided by the Supreme Court of Illinois.

CONCLUSION.

We submit that no federal question is here presented for determination; that the Supreme Court of Illinois decided these case wholly upon non-federal questions, concerning which the decision of that Court is final, and that even if this were not true, its decision is supported by the overwhelming weight of authority as to the questions decided. The Court did not directly pass upon the questions raised as to the constitutionality of the Venue Act under the State Constitution, although by prior decisions and in the instant cases it substantially decided against petitioners' contentions in that respect.

It seems to us that the writs in these cases were improvidently granted. We therefore ask that the judgments of the Supreme Court of Illinois be affirmed, or that the orders granting the writs be set aside and the petitions for the writs denied.

All of which is respectfully submitted.

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